

FISCAL NOTE

Bill #: SB0322

Title: Public financing option for supreme court candidates

Primary Sponsor: Ellingson, J

Status: As Introduced

Sponsor signature	Date	Chuck Swysgood, Budget Director	Date
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Fiscal Summary

Expenditures:

General Fund
State Special Revenue

FY 2004

Difference

\$191,408
\$175,000

FY 2005

Difference

\$172,800
\$400,000

Revenue:

General Fund
State Special Revenue

\$(2,660,872)
\$2,825,872

\$(2,660,872)
\$2,810,872

Net Impact on General Fund Balance:

\$(2,852,280)

\$(2,833,672)

- | | |
|--|---|
| <input type="checkbox"/> Significant Local Gov. Impact

<input type="checkbox"/> Included in the Executive Budget

<input checked="" type="checkbox"/> Dedicated Revenue Form Attached | <input checked="" type="checkbox"/> Technical Concerns

<input checked="" type="checkbox"/> Significant Long-Term Impacts

<input checked="" type="checkbox"/> Needs to be included in HB 2 |
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Fiscal Analysis

ASSUMPTIONS:

Department of Revenue

1. This bill creates a new “public money election campaign fund” in the state special revenue fund (Section 17).
2. *Section 26* provides for a new voluntary checkoff for *individual income tax* purposes. Taxpayers may contribute part of any tax payment due at the time of filing, up to \$50 (\$100 for married couples), to the public money election campaign fund. Essentially, because this will not cost taxpayers anything, the taxpayer will make the choice as to whether payments due at the time of filing will be deposited in the state general fund, or in the public money election campaign fund.
3. *Section 27* provides for a new *nonrefundable* tax credit, up to \$50 per taxpayer, against *individual income taxes* for contributions to the public money election campaign fund. For contributions up to \$50, this credit will not cost taxpayers anything out of pocket, but allows taxpayers to choose whether funds should be deposited in the general fund or the public money election campaign fund.
4. *Section 28* provides for a new voluntary checkoff for *corporation license tax* purposes. Taxpayers may contribute part of any tax payment due at the time of filing, up to \$50, to the public money election campaign fund. Essentially, because this will not cost taxpayers anything, the taxpayer will make the choice as to whether payments due at the time of filing will be deposited in the state general fund, or in the public money election campaign fund.

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5. *Section 29* provides for a new *nonrefundable* tax credit, up to \$50, against *corporation license taxes* for contributions to the public money election campaign fund. For contributions up to \$50, this credit will not cost taxpayers anything out of pocket, but allows taxpayers to choose whether funds should be deposited in the general fund or the public money election campaign fund.
6. To the extent that taxpayers utilize checkoffs or make donations (up to \$50), revenue to the state general fund will decrease, and revenue to the state special revenue account will increase.
7. The Department of Revenue has no reliable means of determining how many taxpayers will choose to use the checkoffs or make donations for which a tax credit will be allowed under this bill. In the past, a similar provision in law (eliminated in tax year 1993) allowed taxpayers to contribute up to \$1 each to a public campaign fund. Over the last five years that this provision was in effect, an average of about 1,700 taxpayers used this checkoff annually. However, this contribution could not be used as an offset against any payment due, but could only be deducted in the following year. A much larger number of taxpayers will use the checkoffs and the credits for donations to the public money election campaign fund provided for in this bill.
8. The vast majority of taxpayers contributing to the public money election campaign fund will do so through the checkoff available on corporate and individual income tax returns, as this means of contributing will be highly visible to taxpayers. The following table shows the number of corporations and individual income taxpayers that could possibly make a donation, and the revenue impact if every one

SB322 - Maximum Revenue Impact from Corporations and Individual Income Taxpayers Who Have Tax Due at the Time of Filing			
A. Corporations			
Number of corporations (FY2002)			
- paying \$50 minimum tax			9,740
- paying more than \$50 minimum tax			6,152
Total Corporations Eligible:			15,892
Maximum Credit Allowed:			\$50
Maximum Possible Revenue Impact:			\$794,600
B. Individuals Owing Tax on Returns			
	Number	Average Contribution	Total Revenue Impact
Married Couples:			
w/Tax Due < \$100	19,627	\$50	\$981,350
w/Tax Due >= \$100	52,056	\$100	\$5,205,600
Sub-Total Revenue Impact			\$6,186,950
All Other Filers			
w/Tax Due < \$50	12,412	\$25	\$310,300
w/Tax Due >= \$50	31,789	\$50	\$1,589,450
Sub-Total Revenue Impact			\$1,899,750
Total Revenue Impact - Individuals			\$8,086,700
C. Corporations and Individuals			\$8,881,300

of these corporations and individuals took the maximum checkoff allowed of \$50 (\$100 if a married couple). A total of 15,892 corporations could make the maximum checkoff of \$50, for a total revenue impact of \$794,600.

9. Of the 115,884 tax returns filed for tax year 2001 in which taxpayers owed taxes on filing, there were 19,627 returns of married couples where the tax due was less than \$100. If these taxpayers made an average checkoff of \$50 the revenue impact would be \$981,350. A total of 52,056 married-couple returns

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had taxes due of more than \$100. If each of these households made the maximum checkoff of \$100, the revenue impact would be \$5,205,600. There were 12,412 returns where individual filers had taxes due of less than \$50. If these taxpayers made an average checkoff of \$25 the revenue impact would be \$310,300. Finally, there were 31,789 returns filed by individual filers where the taxes due were greater than \$50. If these taxpayers each contributed \$50 the revenue impact would be \$1,899,750. The total possible revenue impact from individual income tax filers in each year is \$8,086,700.

10. Theoretically, it would be possible for corporations and individual income tax filers to divert a total of \$8,881,300 away from the state general fund to the public money election campaign account through the checkoff mechanism. It is not likely that none of these taxpayers will take the checkoff; it is equally unlikely that all of them will make the maximum checkoff. The revenue impact on the general fund and the public money election campaign will fall somewhere between these two extremes.
11. For the purposes of this fiscal note, it is assumed that one-quarter of all eligible corporations will make the maximum checkoff of \$50 for a revenue impact of \$198,650; and that individual income taxpayers also will make checkoffs to the public money election campaign in an amount equal to one-quarter the maximum possible impact shown in the above table, or checkoffs totaling \$2,220,325. This results in a total diversion of \$2,418,975 away from the general fund into the public money election campaign account.
12. Taxpayers choosing to contribute to the public money election campaign fund by making direct donations and taking the corporate or individual income tax credits will increase the amount in assumption 11 by an additional 10%. This results in a total diversion of \$2,660,872 annually from the general fund to the public money election campaign account ($\$2,418,975 \times 1.1 = \$2,660,872$).
13. Administrative expenses of the Department of Revenue would increase by \$10,948 in fiscal year 2004 to provide the needed programming changes to the corporation and individual income tax data processing systems.

Commissioner of Political Practices

14. Passage of SB 322 would require the Commissioner of Political Practices to adopt rules implementing sections 1 through 25. The total estimated cost for legal expenses in FY 2004 is \$9,660.
15. The Commissioner of Political Practices would have contracted services expenses to have proposed rules formatted per ARM regulations. It is estimated that the contract would be 80 hours at a cost of \$10.00 per hour, resulting in a cost of \$800 in FY 2004.
16. Passage of SB 322 would require the need for continuing legal services to enforce sections 1 through 25. The total estimated yearly fiscal cost for these legal services \$2,800. It is important to emphasize that this figure does not include estimates of other anticipated legal expenses, such as defending judicial review actions challenging the commissioner's decisions under section 10(5), seeking injunctions in district court under section 20(5), and investigating complaints pursuant to section 20(4).
17. There were 2 candidates for chief justice of the Supreme Court and 4 Supreme Court justice candidates in the 2000 election cycle. Assuming there is the same number of candidates in the 2004 elections and assuming that 50% of the candidates would participate in the Supreme Court election campaign fund, 3 Supreme Court candidates would participate in 2004.
18. Passage of SB 322 would require that candidates who wish to participate in the Supreme Court election campaign fund meet qualifying conditions. Assuming that 50% of the supreme court candidates in 2004 would participate, over 3,000 receipts of qualifying contributions would have to be submitted to the Commissioner for approval along with a declaration indicating each candidate has complied and will comply with all requirements of sections 1 through 25.
19. With passage of SB 322, the Commissioner shall issue to a participating candidate a line of credit evidenced by a public money debit card. Expenditures charged to debit cards would be paid from the Supreme Court election campaign fund. Clerical and accounting support for administration of the fund

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and the debit card system would require an additional half-time Grade 11 Administrative Support position at a cost of \$17,200 per fiscal year.

20. SB 322 would create a Supreme Court election campaign fund. The fund would consist of the following revenues: (1) money transferred from the general fund under section 32 (\$150,000 in each fiscal year), (2) qualifying contributions paid by candidates seeking certification as participating candidates and any qualifying contributions collected by a candidate in excess of the number necessary for certification as a participating candidate (\$15,000 in FY 2004 if 50% of supreme court candidates participate), (3) fines levied by the commissioner against candidates for violations of sections 1 through 25 (the amount of revenue from fines is undeterminable), (4) money resulting from the voluntary tax check offs provided for in SB 322, (5) interest or other income generated by money in the fund, (6) loans received from the board of investments pursuant to section 25, and (7) other sources of revenue determined necessary by the legislature.
21. Passage of SB 322 would require the commissioner to pay participating candidates set amounts from the Supreme Court election campaign fund. If 50% of the Supreme Court candidates in 2004 participate and assuming they were contested races, the commissioner would pay \$175,000 in FY 2004 and \$400,000 in FY 2005 from the fund to participating candidates.
22. SB 322 would require the commissioner to pay additional funding to participating candidates that matches independent expenditures or excess campaign contributions of nonparticipating candidates up to 200% of the total amount of public money funding paid by the commissioner to a participating candidate in that election. The amount of this additional funding that would be paid from the fund is undeterminable.
23. SB 322 would require the commissioner to pay, upon determination that an issue advertisement could reasonably be interpreted as having the effect of promoting the defeat of a participating candidate or the election of that participating candidate's opponent, to pay to that participating candidate additional public money funding equal in amount to the cost of the issue advertisement. The amount of this additional funding that would be paid from the fund is undeterminable.
24. Passage of SB 322 would allow the commissioner to conduct random audits to ensure compliance with sections 1 through 25. Inasmuch as public monies would be provided to Supreme Court candidates, verification that expenditures by those candidates meet statutory provisions would be valuable to ensure public trust. Assuming the commissioner would audit 50% of the participating candidate's expenditures, 2 audits would be conducted. The commissioner would require contracted services to perform random audits and investigations. Assuming that each audit would take 5 days, estimated hours would be 80 hours at a cost of \$35 per hour resulting in a cost of \$2,800 in FY 2005.
25. Passage of SB 322 would require the commissioner to accept and investigate anonymous complaints. The legal fees associated with this requirement are undeterminable.
26. SB 322 would allow the commissioner to borrow money from the board of investments for the Supreme Court election campaign fund. If the money in the fund is insufficient to repay the loans within the period of time determined by the board of investments, the loans must be repaid from the general fund.

Board of Investments

27. SB 322 provides for a public financing option for candidates to the Montana Supreme Court. SB 322 authorizes the Board of Investments (Board) to make loans to the Commissioner of Political Practices (Commissioner) for the purposes of providing funding for the public financing option for candidates to the Montana Supreme Court.
28. If the Board were to make a loan it would be through the INTERCAP program, under which the Board sells tax-exempt bonds and loans the proceeds to eligible governmental entities. SB 322 qualifies the Commissioner, as an eligible governmental entity, and any loan that might be made, would be at whatever INTERCAP interest rate was in effect on the date of the transaction. Interest rates change annually in the

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INTERCAP program. If the money in the public election campaign fund is insufficient to repay the Board's loans, then said loans must be repaid by the general fund (SB 322, Section 25).

29. There are no fiscal impacts to the Board.

<u>FISCAL IMPACT:</u>	<u>FY 2004 Difference</u>	<u>FY 2005 Difference</u>
FTE (Commissioner of Political Practices)	.50	.50

Expenditures:**Commissioner of Political Practices**

Personal Services	\$17,200	\$17,200
Operating Expenses	\$13,260	\$5,600
Transfer from General Fund to St Special	\$150,000	\$150,000
Payments from fund to candidates	<u>\$175,000</u>	<u>\$400,000</u>
Subtotal Commissioner of Political Practices	\$205,460	\$422,800

Department of Revenue

Operating Expenses	\$10,948	\$0
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TOTAL	\$366,408	\$572,800
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Funding of Expenditures:

General Fund (01)	\$191,408	\$172,800
State Special Revenue (02)	\$175,000	\$400,000

Revenues:

General Fund (01)	\$(2,660,872)	\$(2,660,872)
State Special Revenue (02)	\$2,825,872	\$2,810,872

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

General Fund (01)	\$(2,852,280)	\$(2,833,672)
State Special Revenue (02)	\$2,660,872	\$2,410,872

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

No impact.

LONG-RANGE IMPACTS:

1. General fund revenues will be reduced by the amount used as checkoffs to, and credits for donations to the public money election campaign fund in each future fiscal year.
2. Since there will be no significant supreme court elections in 2004, there could be a significant increase in the expenditures from the supreme court election campaign fund in FY 2006 and FY 2007.

TECHNICAL NOTES:

1. If the money in the public election campaign fund is insufficient to repay the Board's loans, then said loans must be repaid by the general fund (SB 322, Section 25). SB 322 in effect, makes the general fund the guarantor for the public financing option for candidates to the Montana Supreme Court. Candidates campaign expenditures and administrative costs are mandated, but it is questionable as to whether revenues or

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contributions will be sufficient to meet said expenses. If revenues and contributions are insufficient to meet mandated SB 322 expenditures, then the general fund steps in and makes up the difference.